



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

ST. LUKE'S EPICOPAL HOSPITAL  
6519 FANNIN  
HOUSTON, TX 77030

DWC Claim #:  
Injured Employee:  
Date of Injury:  
Employer Name:  
Insurance Carrier #:

#### **Respondent Name**

NATIONAL UNION FIRE INS CO OF PITTSB  
PA

#### **Carrier's Austin Representative Box**

Box Number 19

#### **MFDR Tracking Number**

M4-98-3810-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary:** "On December 6, 1995, the Third Court of Appeals in Austin rendered a judgment that the Texas Workers' Compensation Commission rule establishing a fee guideline for acute care, inpatient hospital services was void. That guideline was adopted by reference in Title 28 Texas Administrative Code 134.400...The judgment of the Third Court of Appeals has become final and effective that the Acute Care Inpatient Hospital Fee Guideline (per diem rates) has been declared void. Due to finality of the judgment of the Third Court of Appeals, a hospital may resubmit specific bills for acute care, inpatient hospital services if the services covered by the bills were provided on December 6, 1995. Resubmitted bills may be sent on the basis that reimbursement under the Guideline did not allegedly comport with the provisions of the Texas Workers' Compensation Act.[e.g. Texas Labor Code 413.11(a) and (b)]. Insurance carriers should process those resubmitted bills, which must comply with the Commission's requirements set out in Title 28 Texas Administrative Code 134.800, in accordance with the provisions of the Texas Workers' Compensation Act. "

**Amount in Dispute:** \$5,133.63

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary:** "Carrier would show that Requestor has not met its burden of showing that the fees billed were fair and reasonable, designed to ensure the quality of medical care and achieve effective medical cost control, not in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living, and/or based on the increased security of payment afforded by the Texas Workers Compensation Act. Requestor has failed to provide evidence of the reimbursement it received under preferred provider or other managed care contracts, which would provide a true measure of what is fair and reasonable reimbursement for the Requestor. Attached as Exhibit A are Carrier documents concerning the auditing, reduction, reauditing and payment of the bill in dispute. Carrier paid \$2,190.32, then an additional \$3,385.42. Carrier has thus paid a total of \$5,575.74 toward the disputed bill. "

**Response Submitted by:** Flahive, Ogden & Latson, P.O. Box 13367, Austin, TX 78711

## SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
July 24, 1996 July 25, 1996	Inpatient Hospital Services	\$5,133.63	\$0.00

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the procedures for resolving medical fee disputes.
2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.
3. This request for medical fee dispute resolution was received by the Division on July 2, 1997.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - M- Reduced to fair and reasonable
  - The "Amount Allowed" may reflect an adjustment due to repricing to applicable state fee schedules and/or exclusions of patient convenience items.

### Findings

1. This dispute relates to inpatient hospital services. The former agency's *Acute Care Inpatient Hospital Fee Guideline* at 28 Texas Administrative Code §134.400, 17 *TexReg* 4949, was declared invalid in the case of *Texas Hospital Association v. Texas Workers' Compensation Commission*, 911 *South Western Reporter Second* 884 (Texas Appeals – Austin, 1995, writ of error denied January 10, 1997). As no specific fee guideline existed for acute care inpatient hospital services during the time period that the disputed services were rendered, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). 28 Texas Administrative Code §134.1(f), effective October 7, 1991, 16 *Texas Register* 5210, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, sec. 8.21(b), until such period that specific fee guidelines are established by the commission."
2. The former Texas Workers' Compensation Act section 8.21 was repealed, effective September 1, 1993 by Acts 1993, 73rd Legislature, chapter 269, section 5(2). Therefore, for services rendered on or after September 1, 1993, the applicable statute is the former version of Texas Labor Code section 413.011(b), Acts 1993, 73rd Legislature, chapter 269, section 1, effective September 1, 1993, which states, in pertinent part, that "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle."
3. Review of the submitted documentation finds that:
  - The requestor's position statement asserts that "On December 6, 1995, the Third Court of Appeals in Austin rendered a judgment that the Texas Workers' Compensation Commission rule establishing a fee guideline for acute care, inpatient hospital services was void. That guideline was adopted by reference in Title 28 Texas Administrative Code 134.400. Due to the finality of the judgment of the Third Court of Appeals, a hospital may resubmit specific bills for acute care, inpatient hospital services if the services covered by the bills were provided on or after December 6, 1995. Resubmitted bills may be sent on the basis that reimbursement under the Guideline did not allegedly comport with the provisions of the Texas Workers' Compensation Act [e.g. Texas Labor code 413.11(a) and (b)]. Insurance carriers should process those resubmitted bills, which must comply with the Commission's requirements set out in Title 28 Texas Administrative Code 134.800, in accordance with the provisions of the Texas Workers' Compensation Act."
  - The requestor's supplemental position statement asserts "... that the amount of a fee is not the only or the most effective manner in which to bring about effective medical cost control should be to prevent unnecessary treatments while ensuring that the fee paid is both fair and reasonable. In the opinion of

expert Wallace (see affidavit) the services provided by St. Luke's helped to prevent unnecessary treatments. St. Luke's again, as mentioned above, believes its fees are both fair and reasonable to promote recovery and therefore help to eliminate unnecessary treatments...Under Work-Link, which was established in 1991, reimbursement for workers' injured on-the-job was not less than 70% of the billed charges...The honorable Commission did in fact, by rule, establish medical policies and guidelines for inpatient acute care hospital charges. These rules, however, were declared void ...Therefore we see no increased security of payment provided by this subtitle (Section 413.011) We therefore ask the Commission to either make a ruling to reimburse the hospital for the fees billed or not less than the percentage of what was reimbursed before Section 413.011 was enacted. The percentage of reimbursement for St. Luke's Episcopal Hospital was 97% of fees charges. "

- In numbered paragraph 4 of St. Luke's Supplemental Response to TWCC Advisory 98-01, the requestor asserts " The request for reimbursement does not provide for payment of a fee in excess of the fee charged for similar treatment of an individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. Yet in numbered paragraph 1, the requester states, in pertinent part, that "St. Luke's discount rates for workers' compensation and managed care contracts are as follows:...

Workers' Compensation...    Managed Care Contracts...

1996	47.8%	1996	41.6%
1997	50%	1997	45.3%

The requestor is seeking reimbursement at 100% of the billed charges for the services in dispute, or in the alternative 97% of fees charged. Given that the requestor states that it discounted it's other workers' compensation and managed care contracts services by 47.8% and 41.6% respectively during 1996, the same year that the disputed services were performed, the Division finds that the requestor has not supported its assertion that the request for reimbursement does not provide for payment of a fee in excess of the fee charged for similar treatment of an individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf.

- The Division finds that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital's billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- Regardless of whether the hospital billed its usual and customary charges or whether the charges were comparable to charges billed by other hospitals for similar services, no documentation was found to support that the amount charged for the disputed services represents a fair and reasonable reimbursement for the services in dispute.
- The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.
- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

## **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under 28 Texas Administrative Code §133.305(d). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### Authorized Signature

_____	_____	10/21/2011
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO REQUEST AN APPEAL***

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**